guideline used in examinations, investigations, or enforcements proceedings, and documents that disclose the identity of a confidential source.

- (3) The designated contract market's enforcement and compliance staffs must be parties to the hearing, and the enforcement staff must present their case on those charges and sanctions that are the subject of the hearing.
- (4) The respondent must be entitled to appear personally at the hearing, must be entitled to cross-examine any persons appearing as witnesses at the hearing, and must be entitled to call witnesses and to present such evidence as may be relevant to the charges.
- (5) The designated contract market must require persons within its jurisdiction who are called as witnesses to participate in the hearing and to produce evidence. It must make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.
- (6) If the respondent has requested a hearing, a copy of the hearing must be made and must become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed pursuant to the rules of the designated contract market, or is reviewed by the Commission pursuant to section 8c of the Act or part 9 of this chapter. In all other instances a summary record of a hearing is permitted.

(b) [Reserved]

§38.708 Decisions.

Promptly following a hearing conducted in accordance with §38.707 of this part, the disciplinary panel must render a written decision based upon the weight of the evidence contained in the record of the proceeding and must provide a copy to the respondent. The decision must include:

- (a) The notice of charges or a summary of the charges;
- (b) The answer, if any, or a summary of the answer:
- (c) A summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

- (d) A statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;
- (e) An indication of each specific rule that the respondent was found to have violated; and
- (f) A declaration of all sanctions imposed against the respondent, including the basis for such sanctions and the effective date of such sanctions.

§ 38.709 Final decisions.

Each designated contract market must establish rules setting forth when a decision rendered pursuant to this section will become the final decision of such designated contract market.

§38.710 Disciplinary sanctions.

All disciplinary sanctions imposed by a designated contract market or its disciplinary panels must be commensurate with the violations committed and must be clearly sufficient to deter recidivism or similar violations by other market participants. All disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, must take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction must also include full customer restitution, except where the amount of restitution, or to whom it should be provided, cannot be reasonably determined.

§ 38.711 Warning letters.

Where a rule violation is found to have occurred, no more than one warning letter may be issued per rolling 12-month period for the same violation.

§ 38.712 Additional sources for compliance

Applicants and designated contract markets may refer to the guidance in appendix B of this part to demonstrate to the Commission compliance with the requirements of §38.700 of this part.

Subpart O—Dispute Resolution

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.